

JAN 05 2007

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
ROANOKE DIVISION

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JAMES D. LUEDTKE,	)	
Plaintiff,	)	Civil Action No. 7:06CV00714
	)	
v.	)	<u>MEMORANDUM OPINION</u>
	)	
TERRY O'BRIEN, <u>et al.</u> ,	)	By: Hon. Glen E. Conrad
Defendants.	)	United States District Judge

Plaintiff James D. Luedtke, a federal inmate proceeding pro se, filed this civil rights action, pursuant to Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics, 403 U.S. 388 (1971), on December 1, 2006. Luedtke also applied to proceed in forma pauperis, pursuant to 28 U.S.C. § 1915(b).

By order entered December 13, 2006, the court granted Luedtke's request to proceed in forma pauperis.<sup>\*</sup> However, the court has since discovered that Luedtke has been advised on at least four prior occasions that he has "three strikes" for purposes of 18 U.S.C. § 1915(g): Luedtke v. Agnello, Docket No. 00-4305 (7th Cir., Dec. 28, 2000); Luedtke v. Posner, Docket No. 99-1809 (7th Cir., Dec. 12, 1999); Luedtke v. Bertrand, Docket No. 99-1571 (7th Cir., Dec. 17, 1999); Luedtke v. Bertrand, 32 F. Supp. 2d 1074 (E.D. Wis. 1999). Therefore, Luedtke may not proceed with this action unless he either pays the \$350.00 filing fee or demonstrates that he is "under imminent danger of serious physical injury." 28 U.S.C. § 1915(g). Because Luedtke has neither paid the filing fee nor demonstrated any imminent danger of serious physical harm, the court will vacate the order granting his request to proceed in forma pauperis and dismiss this

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<sup>\*</sup>By separate orders, the court denied Luedtke's motion for appointment of counsel, his motion for class certification, and his motion to "proceed under John Doe filing status." Luedtke has since filed a motion for reconsideration. Having reviewed Luedtke's arguments, the court remains convinced that the motions were properly denied. Accordingly, the court will deny his motion for reconsideration.

action without prejudice, pursuant to § 1915(g).

The Clerk is directed to send certified copies of this memorandum opinion and the accompanying order to Luedtke.

**ENTER:** This 4<sup>th</sup> day of January, 2007.

A handwritten signature in cursive script, appearing to read "Julie Conrad", is written above a horizontal line.

United States District Judge